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14 April 2003

Hon. Jo Anne B. Barnhart
Office of Regulations
Social Security Administration
100 Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

Re: Social Security proposal, "Evidence
Requirements for Assignment of Social Security
Numbers (SSNs); Assignment of SSNs for
Nonwork Purposes", 58 FR 14563, March 26, 2003.

Dear Commissioner:

The proposal to cut back on the issuance of Social Security numbers is a bad idea put forth at the wrong time.

For six decades libertarians have opposed the expanding use of Social Security numbers, while those charged with law enforcement and the protection of public safety have seen the numbers as a useful tool, a convenient universal identifier, and a way to keep track of people as they move between different states and different systems.

Several years ago, long before the horrific wake-up call on 9-11, the Social Security Administration started moving some non-citizen accounts out of the Social Security system and into the IRS system, using the individual tax payer identification number, the ITIN. This has not worked out well.

The USA PATRIOT Act, section 326(b), required the Department of the Treasury to report to Congress on the feasibility of requiring banks to identify non-citizen customers with more certainty. Treasury has reported, "with respect to ITINs, those numbers should not be relied on

for the purpose of verifying the identity of a foreign national.” October 21, 2002, “Report to Congress in Accordance with Sec. 326(b),” submitted by the Department of the Treasury, page 2.

. . . ITINs were created solely for the purpose of facilitating voluntary compliance with internal revenue laws. As a result, the IRS does not employ rigorous identification verification procedures. For example, a foreign national can apply for an ITIN by mail or through an authorized ITIN Acceptance Agent, which is a person or entity authorized by the IRS to take applications. Thus, the ITIN does not have significant value as a tool for verifying the identity of an account holder. . . .

Id., pages 22-23; <http://www.ustreas.gov/press/releases/reports/sec326breport.final.pdf>.

There are reports of the same ITIN being issued to different people. ITINs are not available in data bases organized around Social Security numbers. And, although ITINs are conventionally formatted differently from Social Security numbers, both are nine digit numbers, and there is a tremendous temptation, when asked for a Social Security number, simply to fill in one's ITIN, and to claim one did not understand the difference if challenged. In many cases this claim must be true, since it takes some investigation to learn what the difference is.

Watchdog groups concerned with immigration fraud have identified the ITIN as a dangerous trend and have begun expressing public concern about its growing use. See the report “Giving Cover to Illegal Aliens; IRS Tax ID Numbers Subvert Immigration Law,” by Marti Dinerstein recently distributed by the Center for Immigration Studies, <http://cis.org/articles/2002/back1202.html>.

On the underlying issue of whether there should be a universal tracking system, the law-and-order side won a conclusive victory in the Welfare Reform Act of 1996:

42 USC 666(a)(13) is a specific mandate to require Social Security numbers for drivers' licenses, etc.

42 USC 666(a)(13), part of the deadbeat parent legislation which some may feel revolutionized American life in the name of welfare reform (the 1996 Welfare Reform Law; see 1997 USCCANS 1435, 2176, 2185, 2470), requires all states to require that the Social Security number of

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

An interpretation that this requires recording the number only if the applicant happens to have one defies not only the unambiguous wording of the statute, but also its underlying rationale. If Congress wanted to catch those who apply for licenses while in arrears in child support, we would directly subvert that purpose if we created classes of persons, no less fertile than citizens

and persons with working visas, who do not have Social Security numbers at all. And any applicant for a license could avoid detection by claiming he or she was in one of those classes.

42 USC 405(c)(2)(C)(i) says Federal policy links drivers' licenses with Social Security numbers.

42 USC 405(c)(2)(C)(i), while permissive rather than mandatory, removes any doubt about the propriety of a state using Social Security numbers for drivers' licenses and other purposes:

It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

Thus has Congress decreed that the Social Security numbering scheme, universal since its inception some six decades ago, is now a national tracking system, linking data from the nation's law enforcement agencies, and from the ordinary transactions of daily life, by means of a unified national identifier. However one may feel about this, it leaves no room for a category of drivers who are known only by their names, or by some numbering system other than Social Security numbers.

Hence, if we are to cut back on the availability of Social Security numbers these statutes will have to be changed. And in the post-9/11 world, that would be a step in the wrong direction.

The original concern within the Social Security Administration leading to the proposed changes took no notice of the needs of law enforcement, much less the dangers of terrorism, but dealt only with illegal immigration and working. There is almost no enforcement of the laws on this subject and literally millions of persons hold jobs in the United States using fictitious Social Security numbers. A much smaller group of persons hold jobs using Social Security numbers given to them for "nonworking" purposes, despite the fact that their cards are stamped "Not Valid for Employment," or some such phrase. The official indifference to illegal working has resulted in complete neglect of the regulation that says Social Security is to report to INS any wages that come in on a nonworking number. 20 CFR 422.107(e). Either these reports are not made, or nothing is done to follow them up.

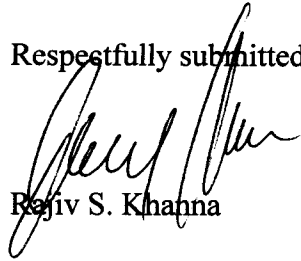
The proposal to compound this refusal or inability to carry through on the enforcement of this regulation by cutting back on the issuance of the nonworking numbers, the very numbers that provide the most efficient control over the population that cannot legally work, is worse than irrational. There is no way a Social Security number can be made a reliable indicator of the legal

right to work. There are too many of them already issued to persons without that legal right, they are too easily forged, and aliens pass too frequently from one status to another. Yet the very agency that cannot or will not supply a simple computer printout of people openly working under nonworking numbers is proposing to try to make, or to appear to make, its cards and numbers into credentials, reliable certificates of the right to hold a job.

Such overreaching has become all too common in the post-9/11 world. All too often an agency will "raise" its standards -- require an extra document, for instance, or any other measure that inflicts inconvenience on honest people but would delight a terrorist, who would have ample time and money and resources to get that extra document -- and then offer the public the false assurance that it has done something of at least marginal utility. Usually such a "security" gesture is merely cosmetic and redirective. But in this case we are being asked to accept a significant degradation of a universal security scheme already in place and functioning, the Welfare Reform Act provisions, and the outright abandonment of a regulatory device, the nonworking Social Security number, which has never been used effectively in enforcement but easily could be, and probably will be effectively used some day if left in place.

This is not a time to be exempting any segment of our non-citizen population from any useful numbering or tracking device. The last thing we need is a segment of our lawfully admitted nonimmigrant population which cannot be included in standard databases and is allowed to drive using only a taxpayer identification number. The proposed change should not be allowed.

Respectfully submitted,



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Gaillard T. Hunt

Attorneys for plaintiffs in *Iyengar v. Barnhart*, 233 F.S. 2d 5 (D.C., 2002),
<http://www.dcd.uscourts.gov/02-0825.pdf>.